justified the exercise of the judge's discretion in favour of the respondent.

There was no cross-appeal by the respondent that he should have been paid his costs up to the service of the certificates and not up to the date of the issue of the certificates. It was arguable, but counsel for the respondent was quite satisfied with the order made and I say no more about it.

I would dismiss the appeal with costs.

Lee Hun Hoe C.J. (Borneo) concurred.

Wan Suleiman F.J. (read by Chang Min Tat F.J.): I have read the judgment of my learned brother Datuk Chang with interest, and agree that on the grounds set out so lucidly by his Lordship this appeal should be dismissed with costs.

It may seem hard that in circumstances such as the present one the successful party should have to pay costs, but it is infinitely harder for a member of the armed forces who has been seriously injured, subject as he is to rigid rules of discipline to wait helplessly not knowing whether he would get service compensation whilst time for obtaining redress from the courts of law is running out.

If as learned Federal Counsel had stated, the present practice is to wait until a writ is filed by the injured member of the force before any move is made to seek a certificate from the Minister of Finance, then no complaint that the trial judge had not used his discretion judicially in making an order of the present sort is likely to find favour with this court. I would make so bold as to suggest that in any instance where death or serious injury (trifling injuries may be ignored) occurs to a force member in circumstances contemplated in section 14(1)(a) of the Government Proceedings Ordinance, 1956, his superiors should as a standard administrative measure inform his personal representative or the force member, as the case may be, without delay whether the Minister would certify the accident as coming under section 14(1)(b) of that Ordinance.

Appeal dismissed.

Solicitors: *Murphy & Dunbar.*

COLLECTOR OF LAND REVENUE, JOHOR BAHRU v. SOUTH MALAYSIA INDUSTRIES BHD.

[F.C. (Gill C.J. (Malaya), Ong Hock Sim and Raja Azlan Shah F.JJ.)
July 16 and 17, August 25 and January 5, 1978]

[Johore Bahru — Federal Court Civil Appeal No. 75 of 1976]

Land Law — Forfeiture — Special conditions imposed on alienation of land — Land to be solely used for erection of a factory — Portion of land rented out to urea company for use as a store — Whether this constitutes breach of condition — National Land Code, ss. 117, 128, 129 and 257.

This was an appeal from the decision of Syed Othman J. ([1976] 2 M.L.J. 271). The respondents had been granted a 60 year lease over 3 acres of State land with special conditions, the main one being that it was to be used solely for the erection of a factory. Another condition prohibiting the transfer, charge or sublease of the land had been lifted after the factory was built. Two other express conditions were referred to in the qualified title. The first related to the payment of premium and deposit and the second was in regard to the restriction of user to light industry. The respondents rented out a portion of the factory to an urea company for 3 years for use as a store. The Collector alleged that since the conditions specify that the land should be used for the erection of a factory it was a breach of the conditions to use a portion of it for a store. He applied for forfeiture of the land unless the respondents remedied the breach by June 30, 1976. The respondent applied for a declaration that the Collector's action was bad in law. The learned trial judge granted the application for the declaration and gave three reasons for his decision. First he said there must be an express condition if it is contemplated to prohibit a different user (to use part of factory premises as a store or office); secondly, to use part of factory premises as a store for its own goods and commodities is not inconsistent with section 117(1)(a)(iv) of the National Land Code; and thirdly there must be a prohibition, either express or implied, against sub-leasing. The Collector appealed to the Federal Court.

Held, allowing the appeal: (1) the State Authority had and did exercise its power to impose restrictions as to the user of the factory erected on the land in question. The learned trial judge was wrong when he said that there can only be a breach if there is a special condition, express or implied, prohibiting the use;

(2) the express conditions imposed an imperative obligation on the respondent to use the factory premises for light industry and that being the inherent limitation as to user, storing of industrial chemicals and fertilisers was not a legitimate purpose of user permitted under the lease;

(3) the use of part of the factory premises in this case for an alien and totally unconnected industrial project was inconsistent with the express conditions in the lease;

(4) the Collector could not be said to have acted unreasonably in this case and the respondent company could not claim to be released in equity against the appellant's legal rights.

[**Editorial Note:** See Supplementary Judgment at p. 134.]

Cases referred to:-

(1) *Hyman* v. *Rose* [1912] A.C. 623, 631.
(2) *Kemp* v. *Bird* (1877) 5 Ch. D. 974.
(3) *Bashir* v. *Commissioner of Lands* [1960] 1 All E.R. 117.
(4) *Brigg* v. *Thornton* [1904] 1 Ch. D. 386.
(5) *Esdaile & Ors.* v. *Lewis* [1956] 2 All E.R. 357.
(6) *Lam Kee Ying Sdn. Bhd.* v. *Lam Shes, Tong & Anor.* [1974] 2 M.L.J. 83.
(7) *Winter Garden Theatre (London) Ltd.* v. *Millenivon Productions Ltd.* [1947] 2 All E.R. 331, 343.

FEDERAL COURT.

Suleiman bin Hashim (Senior Federal Counsel) for the appellant.

Chua Jui Leng for the respondent.

Raja Azlan Shah F.J. (delivering the judgment of the Court): This case concerns alienation ot a piece of State Land dated May 13, 1971, and made by the State Authority whereby an industrial lot in Jalan Skudai, Johor Bahru, measuring about 3 acres was granted by the State Authority to the respondent company for a term of 60 years, subject to the provisions and conditions contained in the National Land Code and to a number of specified conditions referred to in the Qualified Title as, and therein set out under the heading of "Special Conditions" (section 109). The said conditions comprised six numbered paragraphs of which the first three are in these terms:

"i. The land hereby leased shall be used solely for the erection of a factory.

ii. Within 24 months from the date of Registration of Q.T., the lessee shall build upon the land hereby leased only a factory according to plan approved by the Town Council and the Collector of Land Revenue, Johor Bahru.

iii. The land hereby leased shall not be transferred, charged, sub-leased or otherwise disposed of until the building of the factory required by the condition first above written has been completed as evidenced by endorsement thereon under the hand of the Commissioner of Lands and Mines."

Two other express conditions are referred to in the Qualified Title. One is with regard to the payments of premium and deposit and the other is restriction as to user, i.e., "supaya plot2 dikawasan Jalan Skudai, Johor Bahru dijadikan kawasan perusahaan rengan" and that the jenis perusahaan "membuat kilang zing, wire-netting, screw dan nuts". These are expressed by references to State Executive Council, Johor Paper PTG. 267/59-11 and a letter of the appellant to the respondent company dated March 1, 1970, vide AAJB. 3/v/243/69.

The factory was built within the stipulated time and on May 13, 1975 the Commissioner of Lands & Mines lifted special condition (iii) (above) and endorsed it at the back of the Qualified Title. On June 11, 1976, the respondent company sub-leased a portion of the factory built thereon to Perbadanan Urea dan Baja Malaysia Sdn. Bhd. ("the urea company") to use it as their store for storing its industrial chemicals and fertilisers and also as their office for their storekeeper for 3 years at the rent of $1,400 per month. Thereupon, on January 22, 1976, the appellant issued a notice in Form 7A under section 128 requiring the respondent company to remedy the breach within a period of one month. It is common ground that the notice was not complied with. On March 8, 1976, the appellant issued a notice in Form 7B under section 129 requiring the respondent company to appear before him in an inquiry to show cause why he should not make an order declaring the land forfeited. At the inquiry which was held on March 29, 1976 the respondent company admitted the breach and asked for time to evict the urea company. They were ordered to remedy the breach on or before June 30, 1976. Instead of complying with the said order, they however, on April 19, 1976, filed a Notice of Motion to declare that the proceedings against them under the provisions of sections 128 and 129 of the National Land Code were misconceived and illegal and as such null and void. The court delivered judgment in their favour on June 15, 1976. The appellant appealed. We allowed the appeal.

It is common ground that the respondent company has not remedied the breach.

The learned judge adopted the reasoning of *Hyman* v. *Rose*[1] that if it was contemplated in a lease to prohibit a different user, that must be expressed as a condition. He thus said:

"The principle underlying this authority as far as I can see, is that in a lease if it is contemplated to prohibit a different user or alteration of premises for different user, then there must be an express condition. In the present case it is common ground that the lease shall be used solely for the erection of a factory. The questions to be determined are whether the use carries with it the use as a store of a portion of a factory that has been erected, and, if so, whether the store can be used to hold not only the goods of the factory, but also other goods. In the context of the principle stated in *Kemp* v. *Bird*[2] the question is does the use of a portion of a factory as a store create wider obligation than intended by the words 'solely for the erection of a factory'."

The learned judge regarded the State Executive Council Paper and the appellant's letter of March 1, 1970, as a general description of the subject-matter. If the intention is to exclude any of the activities referred to in section 117(1), he said that it must be shown that there is inconsistency with any express condition. He was of the view that putting up a store is not inconsistent with the use of the land as a factory. He considered a store is a necessary appurtenance or natural incident to a factory, and putting up a store does not create a wider obligation than that intended by the conditions in the title. In the present case, if it is intended that the factory shall have no store, then it must be so expressed. Similarly, if it is intended that the factory shall not use its store for storage of goods other than the factory's own goods or products, then it must also be so expressed. He concluded that the provisions of section 117(1)(a)(iv) permits the respondent company to use its store not only for its own goods but also for other commodities.

Another ground which found favour with the learned judge is the question of renting a portion of the factory premises. He said that the respondent company has fulfilled the positive condition of erecting a factory. With the lifting of condition (iii) the respondent company is permitted to transfer or sub-lease the whole land, and if that is so, he saw no objection to transfer or sub-lease a portion of it, provided that the use of the said portion is still within the industrial context. He also seemed to think that if it is intended to restrict the respondent company from sub-leasing or allowing any other person occupying part of the premises, there must be an express prohibition. He said that there can only be a breach if there is a special condition such as: "No portion of the factory shall be rented out to any urea company". He concluded by saying that there is no such prohibition, express or implied, in either the Executive Council Paper or the appellant's correspondence of March 1, 1970, or the Special Conditions.

Briefly then, the learned judge gave three grounds for his decision. First, on the authority of *Hyman* v. *Rose, supra,* there must be an express condition if it is contemplated to prohibit a different user (to use part of factory premises as a store and office); secondly, to use part of factory premises as a store for its own goods and other commodities is not inconsistent with section 117(1)(a)(iv); and thirdly, there must be a prohibition, either express or implied, against sub-leasing.

I shall deal with grounds one and three together as they involve the determination of one issue, i.e., there must be express condition restricting user of the land and factory thereon. That in its turn involves the determination of two questions: (1) Is there express condition restricting user, (2) If there is, has the respondent company committed a breach.

Putting it briefly, counsel for the appellant's argument is directed to the case of *Hyman* v. *Rose, supra,* which he said the learned judge had failed to distinguish on the facts. With regard to the second ques-

tion to be resolved, it is said on the analogy of *Bashir* v. *Commissioner of Lands*,[3] that the special conditions endorsed on the document of title, expressed as they are in the passive, as is usual in the case of restrictions as to user, imposed an imperative obligation on the respondent company to perform and observe them, that is, the land shall be used solely for the erection of a factory for the purpose of a light industry for the manufacture of the permitted limited items. That being the case, there is a clear breach of the express conditions referred to in the document of title.

The respondent company's case was argued in the following way. It is said that this is a case of a restrictive covenant as to "letting" only and not "use" and accordingly following the principle enunciated in *Brigg* v. *Thornton*,[4] which in turn applied the principle in *Kemp* v. *Bird*, *supra*, there must be an express condition as regards restriction as to user. Omission to stipulate such a condition in the document of title operates in the company's favour. And therefore as long as it uses the factory in compliance with the express condition referred to in the document of title or implied condition as to "industrial use", its conduct cannot be impeached. The land, it is argued, is subject to the broad category of industry. It was also put in argument that the condition that is binding on the company is the condition specifically endorsed on the document of title and not the other two conditions that are referred to in the Executive Council Paper and the letter of March 1, 1970.

In order to appreciate the case of both parties, it is necessary to examine the authorities referred to in argument.

In *Brigg* v. *Thornton*, *supra*, the lease contained, *inter alia*, a covenant on the part of the landlords "not to let any other portion of the said arcade for trade or business to be carried on by the tenant". It was held following the somewhat similar case of *Kemp* v. *Bird*, *supra*, that the covenant was as to "letting" only and not "using" so that the landlords were free to deal with their property generally, i.e., they could carry on in the arcade business of any kind they chose or they could even sell the arcade to a purchaser who would not thereby be restricted to carry on a similar business.

In *Kemp* v. *Bird*, *supra*, the lease contained a covenant on the part of the landlord only not to let any house in the same street for the purpose of carrying on the business of an eating-house and the usual words extending the covenant to his heirs, executors, administrators, and assigns were expressly left out. It was held that the covenant bound only the landlord as regards "letting" and that he was not restricted from assigning an adjoining house in the same street to another person who was free to carry on the trade of an eating-house on the premises. If it was intended that there should have been a positive restriction as to user, a well-known form would have been used and which would have been binding on the landlord and on his representatives, and his assignees. But it was clear from the covenant that that was not the case. The obligation stopped at the lessor, and was not to extend to his assignee.

In *Hyman* v. *Rose*, *supra*, the ground and chapel then being erected thereon was leased for a term of years and contained covenants by the lessees to complete the chapel by a given date and to repair, maintain, and keep it in good and substantial repair. The chapel was completed and used as a place of worship. The lease was then sold and the premises were adapted for a cinematograph theatre. For that purpose certain internal alterations were effected. It was held that the covenants did not restrict its user as a chapel. Certain trades were forbidden but there was nothing to prevent its user for any other trade. Nor was there anything to prohibit internal alterations suitable for such trade.

In *Bashir* v. *Commissioner of Lands*, *supra*, there were 12 special conditions and one of them, condition 4, read:

"The land and buildings shall be used for hotel purposes only except that shops may be constructed on the ground floor."

The conditions which must be construed as a whole related to a number of different matters of varying importance, all of which, as is usual in conveyancing practice, would be made the subject of covenants relating to forfeiture.

The principle gleaned from these cases is that we must construe the special conditions endorsed on the document of title as they stand and as a whole to see what is the intention of the parties; then it seems to me that the problem is solved without the smallest difficulty. We must be vigilant not to interpret the document and give it an extended meaning which is not therein expressed. James L.J. in *Kemp* v. *Bird*, *supra*, puts it in this way (page 976):

"Persons who are men of business, as they were here, are able to get protection and advice, and they must make their covenants express, so as to state what they really mean, and they cannot get a Court of Law or of Equity to supply something which they have not stipulated for in order to get a benefit which is supposed to have been intended."

Romer L.J. in *Brigg* v. *Thornton*, *supra*, before referring to the above passage said (page 395) "that in cases like this the court ought not to extend a covenant such as this beyond what on the face of it is the purpose of it."

The point at issue therefore turns on the construction of the document of title which must be construed in the light of the provisions of the National Land Code. In the present case there are three express conditions referred to in the document of title and they must be construed as a whole. I summarily reject the submission of counsel for the respondent company that the two express conditions referred to in the Executive Council Paper and the letter of March 1, 1970 and endorsed on the document of title are not binding upon his client. That argument is devoid of any merit. It is really too plain for argument that the erection of the factory on the land in question is for the purpose of setting up a light industry for the manufacture of the permitted items listed in the Executive Council Paper referred to in the document of title. Is the respondent company bound to use the factory exclusively for the manufacture of the permitted items? It is here the parties are at issue. In my opinion, the appellant's case is much stronger.

The State Authority is empowered to impose the express conditions on the said land (section 120). They thus run with the land and they bind the proprietor (section 104). By virtue of section 122(d) the State Authority has power to impose "such conditions as it may think fit with respect to", *inter alia*, "the use to which any building is to be put".

In other words, the State Authority has and did exercise its power to impose restrictions as to user of the factory premises erected on the land in question, i.e., for the purpose of a light industry for the manufacture of zinc, wire-netting, screws and nuts. It will be remembered that the document of title is expressed subject to the provisions and conditions contained in the National Land Code. These words appear to import into the document of title itself references to section 104 and section 122. My conclusion on this is that, on accepting the lease and going into possession under it, the respondent company contracted to observe and perform the conditions which amounted to express conditions for the purposes of section 104 and section 122. In my judgment, the learned judge was wrong when he said that there can only be a breach if there is a special condition, express or implied, such as "No portion of the factory shall be rented out to any urea company". I can only say, with unfeigned respect for the opinion of the learned judge, that he seems to me to be putting in a new condition on the document of title and not interpreting it as it should be. I think he is not justified in taking such a liberty of interpretation. That certainly would be a strange mode of interpreting the special conditions, that because you cannot find anything expressed about using the said factory for the storage of industrial chemicals and fertilisers and as an office, you can invent provisions and insert conditions which the document of title has not provided for.

Has the respondent company committed a breach of the express condition restricting user? It is the respondent company's case that with the lifting of condition (iii) relating to transfer, charge and subleasing, it can sub-lease the whole land and *a fortiori* part of it to the urea company, provided the latter uses that part within the industrial context. It is therefore said that using that part for storing of industrial chemicals and fertilisers and as an office comes within "using" in the industrial context. In my opinion, this line of argument is a little far-fetched. We are not here concerned with the case of landlord and tenant but one under the National Land Code. The National Land Code is our own creation and is intended to be a complete code regulating the respective rights of the State and the occupier. In the former case it is in order to apply the well-established principle of landlord and tenant that a covenant not to sub-let premises is not broken by sub-letting part of it (see *Esdaile & Ors.* v. *Lewis*[5]). In the present case different considerations apply. Here, the restrictive covenants are in respect of both "letting" and "use". However, the covenant in respect of "letting" was lifted but not that with regard to "user". It still runs with the land and binds the respondent company. In my view, these are circumstances which distinguish the present case materially from those of *Brigg* v. *Thornton, supra*, and *Kemp* v. *Bird, supra*. *Bashir* v. *Commissioner of Lands, supra*, too affords no assistance to the argument on behalf of the appellant because that case depended on the interpretation of section 83 of the Kenya Crown Lands Ordinance, 1915 relating to relief against forfeiture.

I cannot assent to the argument that a lessee with an express condition restricting user can under the circumstances of the present case change the nature of the "jenis perusahaan" endorsed on the document of title. Regard must be had to the user of the factory premises which is permissible under the lease, that is, that the express conditions imposed are imperative obligation on the respondent company to use the factory premises for a light industry for the manufacture of the permitted limited articles. That being the inherent limitation as to user, storing of industrial chemicals and fertilisers is therefore not a legitimate purpose of "user" permitted under the lease. In my view, the alteration as to user in the present case is not permissible and is clearly in breach of the express condition restricting user. It is a continuing breach (section 103) and the order of March 8, 1976 does not operate as a waiver by the appellant as the respondent company has not complied strictly with the requirements of the said order (section 129(4)(b) and (5)).

I now turn to ground two — to use part of the factory premises as a store for its own goods and other commodities is not inconsistent with section 117(1)(a)(iv). It must be noted that the land alienated is classified under category "industry" (section 52) which means its use is limited (implied) to industrial purposes which are elaborated in section 117(1)(a), and as far as the present case is concerned for the purpose of erecting the said factory and to use it for or in connection with, *inter alia*, "manufacture" ... and "the storage, transport or distribution of goods or other commodities". These implied conditions only operate to the extent that they are not inconsistent with any express conditions to which the land is subject (section 117(2)). In other words, the implied conditions spelt out in section 117(1) shall not be inconsistent with the express conditions referred to in the document of title, i.e., in our case, for the purpose of a light industry for the manufacture of kilang zing, wire-netting, screw and nuts. The question arises as to whether storing of industrial chemicals and fertilisers is inconsistent with the express condition with regard to the manufacture of the above permitted limited articles. I think the answer must be in the affirmative. Suffice it to say that to use part of the factory premises for an alien and totally unconnected industrial project is inconsistent with the express conditions in the said lease. I would fully endorse the appellant's argument that such use is indeed an unnecessary appurtenance, an unnecessary adjunct, an illegitimate incident to the factory for the simple reason that it was used for purposes which are alien and totally unconnected with industrial project of the factory. The learned judge, in my opinion, had failed to see the difference between the use of a store in a factory by the factory itself and the use of a store in a factory by an alien person for the alien and totally unconnected industrial project as aforesaid.

The result is that the appellant's claim to forfeiture must succeed unless the respondent company can and should be released in equity against the appellant's legal rights.

In the course of the argument, counsel for the respondent company applied for the first time to us for relief against forfeiture by invoking the provisions of section 237 of the National Land Code. That section is reproduced and reads:

"237. (1) Any lessee, sub-lessee or tenant against whom any person or body is proceeding to enforce a forfeiture may apply to the court for relief against the forfeiture: and the court —

(a) may grant or refuse relief as it thinks fit, having regard to all the circumstances of the case (including, if the case is one to which the provisions of section 235 applied, the proceedings and conduct of the parties under that section); and

(b) if it grants relief, may do so on such terms as it thinks fit.

(2) The provisions of sub-section (1) shall have effect notwithstanding any provision to the contrary in the lease, sublease or tenancy in question."

That section which was obviously modelled on the provisions of section 14 of the (U.K.) Conveyancing and Law of Property Act, 1881 (see also section 146 of the (U.K.) Law of Property Act, 1925), has been judicially considered in the Privy Council case of *Lam Kee Ying Sdn. Bhd.* v. *Lam Shes Tong & Anor.*[6] and it certainly supports the proposition that the respondent company is not debarred from making the application for relief for the first time in this court. The point is whether this court ought to relieve the respondent company in the circumstances. It has been said that the court's discretion to grant relief against forfeiture is very wide, and the House of Lords in *Hyman* v. *Rose, supra,* has refused to lay down any rigid rules to fetter it. Although there has been a fluctuation of authority on the subject, I think it is safe to state that as a general rule a court will consider the conduct of the parties, the nature and gravity of the breach and all the circumstances in deciding whether relief should be granted and, if so, on what terms. Evidence has been established that this is a case of clear and wilful breach of an express condition of the lease coupled with a lack of evidence as to the respondent company's ability speedily and adequately to make good the consequences of its default, although the respondent company was given reasonable time on two occasions to remedy it. As a matter of fact, the appellant has done everything possible under the Code to request the respondent company to remedy it. It cannot now be said that he has acted unreasonably in the circumstances. In my opinion, this is also a case of continuous disregard by the respondent company of the appellant's rights over a period of time. Equity expects men of business to carry out their obligations and the settled practice of courts of equity is to do what they can to preserve the sanctity of the bargain. We would indeed be acting flatly contrary to the salutary observation of Lord Uthwatt in *Winter Garden Theatre (London), Ltd.* v. *Millennium Productions, Ltd.*[7] that "in a court of equity, wrongful acts are no passport to favour". I do not think that this court should assist the respondent company who has shown *prima facie* to have trodden roughshod over the appellant's rights.

In the circumstances we allowed the appeal and dismissed the application for relief against forfeiture.

The following Supplementary Judgment was delivered on January 5, 1978:

Raja Azlan Shah F.J.: I have again considered the matter with regard to the application for relief from forfeiture under section 237 of the National Land Code made by the respondent company and I feel that it is misconceived.

Section 237 is referable to Part 15 which deals with leases and tenancies and section 221 refers to leases granted by the proprietor of alienated land. Lease is defined in section 5 to mean a registered lease. This is not the case here as in these proceedings we are dealing with alienation of State Land by the State Authority for a term of 60 years under section 76.

In my view, action to enforce forfeiture in respect of State alienation for a term of years comes under section 129 and *not* under section 234 *et seq* which is within Chapter 3 of Part 15. In the present case the forfeiture provisions under Part 8 would accordingly be applicable, and there is no provision for relief from forfeiture by the court. Section 133 provides for the aggrieved person to apply to the State Authority for annulment of the forfeiture and section 134 prescribes for appeals against forfeiture.

In the circumstances I do not think that this court has jurisdiction to entertain the application made by the respondent company under section 237. It is important to set this matter right as I do not wish that similar applications should be made in the future.

Gill C.J. (Malaya) and **Ong Hock Sim F.J.** concurred.

Appeal allowed.

Solicitors: *Chua Bros.*

T.N. NATHAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Gunn Chit Tuan J.) April 12, 1977]
[Penang — Criminal Appeal No. 116 of 1976]

Criminal Law and Procedure — Appeal — Delay of grounds of decision — Evidence of corroboration — Re-trial.

The appellant was convicted of an offence under section 4(a) of the Prevention of Corruption Act, 1961. The retrial started on June 13, 1972 and was carried on for seventy-seven days over a period of fourteen months. It was concluded on August 20, 1973 and on August 29, 1973 the appellant filed his notice of appeal. But the grounds of decision dated July 20, 1974 were not supplied to counsel until July 2, 1976.

Held: (1) the delay of another two years before receiving the grounds of decision was most unsatisfactory and has prejudiced the appellant;

(2) in this case as the accomplice could not be considered a reliable or credible witness the question of corroboration did not arise;

(3) in all the circumstances it was unsafe to convict the appellant on the uncorroborated evidence of the accomplice and therefore the appeal must be allowed.